

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACOB FORREST,

Defendant.

2:12-cr-00223-PMP-RJJ

REPORT & RECOMMENDATION  
OF UNITED STATES  
MAGISTRATE JUDGE

(Defendant's Motion to Suppress #19)

This matter came before the Court for a hearing on Defendant Jacob Forrest's Motion to Suppress (#19). The Court has considered the Defendant's Motion to Suppress (#19); the Government's Response (#23); and the testimony and arguments presented at the hearing held on October 25, 2012 (#27).

**BACKGROUND**

On the evening of February 28, 2011, Defendant Jacob Forrest and his girlfriend were standing near a black vehicle in an EZ Pawn parking lot in Las Vegas, Nevada. At approximately 5:00 p.m., officers of the Las Vegas Metropolitan Police Department (LVMPD) pulled near the vehicle with the intent to speak with the Defendant and his girlfriend. The officers initiated a conversation, but turned their attention to two other individuals who were using heroine in a nearby car. By the time the officers returned their attention to the Defendant and his girlfriend, the Defendant was no longer in the parking lot. The officers spoke to the Defendant's girlfriend instead and learned that the car belonged to her and was registered in her mother's name. She also stated that the Defendant had been driving the vehicle and she had been the passenger.

1 After that conversation, the officers conducted a records search of the Defendant and learned  
2 that he was a two-time convicted felon for Sexual Assault and Robbery. Based on this information,  
3 the officers contacted detectives from the LVMPD Firearms Investigation Section to assist them.  
4 Two detectives arrived in the parking lot and confirmed that the Defendant was a convicted felon.  
5 One of the detectives then asked the Defendant's girlfriend for consent to search the vehicle. She  
6 agreed and signed a consent form. During the search, the officers discovered a firearm in a  
7 compartment of the car. The gun was seized and the Defendant's girlfriend was allowed to leave.

8 Several months later, the LVMPD detectives learned that Forrest was incarcerated at the  
9 Clark County Detention Center (CCDC) on unrelated charges. The firearms detectives went to the  
10 CCDC on April 13, 2011, to execute a search warrant to recover a sample of the Defendant's DNA.  
11 The Defendant consented to the collection of his DNA and signed a form to that effect.

12 After the detectives collected the DNA, they interrogated the Defendant regarding the gun  
13 found in his girlfriend's vehicle. The parties dispute whether the Defendant was read his Miranda  
14 Rights prior to this interrogation. The parties also dispute whether the Defendant admitted to  
15 handling the gun.

16 The general booking room, where the Defendant was first contacted, is monitored by video  
17 surveillance. However, those videos are only saved for one year, and are no longer available. The  
18 results of the DNA test indicated that the Defendant did not match the DNA. Defendant's  
19 fingerprints were not a match either.

## 20 DISCUSSION

### 21 **I. Fourth Amendment Claims**

22 The Defendant withdrew all his fourth amendment claims at the evidentiary hearing. See  
23 Minutes of Proceedings (#27). Accordingly, the Fourth Amendment claim in the Motion to  
24 Suppress (#19) are moot.

### 25 **II. Miranda Rights**

26 The obligation to administer *Miranda* warnings attaches once a person is subject to  
27 "custodial interrogation." *Miranda v. Arizona*, 384 U.S. 436, 445 (1966). "The prosecution may  
28 not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of

1 the defendant unless it demonstrates the use of procedural safeguards effective to secure the  
2 privilege against self-incrimination.” *Miranda*, 384 U.S. at 444.

3 In this matter, the parties agree that the Defendant was in custody and that before any  
4 interrogation the detectives were obligated to read him his Miranda Rights. According to the  
5 detectives, Forrest was advised of his *Miranda* rights. Additionally, during the interrogation the  
6 Defendant allegedly confessed to handling the gun. Forrest disputes the government’s position.  
7 He argues that he was neither read his rights, nor did he confess to handling a firearm.

8 The only evidence as to whether the detectives issued a *Miranda* warning is the testimony  
9 presented at the hearing. The two detectives asserted that they did issue *Miranda* warnings and  
10 Forrest asserted they did not. Due to the limited evidence, and in light of the fact that the  
11 Defendant has been previously convicted of felonies involving dishonestly, the Court finds that  
12 the LVMPD detectives are more credible than Forrest and that there is not sufficient evidence to  
13 suppress the statements made during custodial interrogation.

#### 14 RECOMMENDATION

15 Based on the foregoing and good cause appearing therefore,

16 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that the  
17 Defendant’s Motion to Suppress (#19) be **DENIED**.

#### 18 NOTICE

19 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must  
20 be in writing and filed with the Clerk of the Court on or before November 9, 2012. The  
21 Supreme Court has held that the courts of appeal may determine that an appeal has been waived due  
22 to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).  
23 This circuit has also held that (1) failure to file objections within the specified time and (2) failure

24 . . . .

25 . . . .


26 . . . .

27 . . . .

28 . . . .

1 to properly address and brief the objectionable issues waives the right to appeal the District Court's  
2 order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d  
3 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

4 DATED this 31st day of October, 2012.

5  
6   
7 ROBERT J. JOHNSTON  
8 United States Magistrate Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28